

In re) Fair Hearing No. 17,377
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Appeal of)

The petitioner appeals a decision by the Department of PATH denying coverage under Medicaid from August 10 through October 2, 2001 for Oxycontin, a narcotic pain reliever. The issue is whether the petitioner met the requirements for prior approval during the period at issue. The facts are not in dispute.

1. On August 10, 2001 the Department received a request from one of the petitioner's physicians for prior approval for Medicaid coverage of Oxycontin. At that time the petitioner had been approved for another generic narcotic pain reliever prescribed by another physician, and there had been a history of the petitioner having been overprescribed pain relievers by various doctors.

2. The same day it received the request for Oxycontin, the Department called the prescribing physician and left a message that it wished to discuss the latest prescription. When, after several days, the physician had not responded, the Department denied its approval of the prescription for Oxycontin.

3. On August 24, and again on September 17, 2001, the petitioner filled the prescription for Oxycontin and paid for it out-of-pocket, a total of \$373.

4. On September 26, 2001 the petitioner's physician finally contacted the Department. On October 2, 2001 the physician furnished the Department with office notes and other information sufficient for the Department to grant prior approval for Oxycontin effective that date.

5. The issue in the case is whether the Department should reimburse the petitioner for the prescriptions for Oxycontin that he filled and paid for prior to October 2, 2001. The Department has provided Medicaid coverage for his prescriptions for Oxycontin after that date.¹ Medicaid has also covered prescriptions for other narcotic pain relievers that the petitioner filled during the period August 10 until October 2, 2001.

ORDER

The decision of the Department is affirmed.

¹ The Department has advised the petitioner that his pharmacy should reimburse him for a prescription for Oxycontin that he paid for after October 2, 2001 that was subsequently covered by Medicaid. The petitioner was further advised to contact the Department if he encounters any problem in obtaining this reimbursement.

REASONS

Pursuant to federal law the Department has adopted regulations for "utilization control . . . to safeguard against unnecessary or inappropriate utilization of services available under Medicaid". WAM § M157. Under WAM § M157.1, "[w]hen recipient abuse is identified, the recipient's access to care will be limited through a requirement for prior authorization. . . ." In this case the petitioner does not contest (though he alleges that any past overuse of medication was due to physician error) that the Department is correct in requiring prior approval for his use of Oxycontin.

The regulations governing prior approval require the Department to promptly notify the provider in question if further information is necessary (WAM § M106.3), and to issue a decision "within three working days of receiving all necessary information", or within 30 days if the essential information is not received (WAM § M106.5). Nothing in the regulations requires the Department to provide retroactive Medicaid coverage for any medical service obtained while prior approval is pending.

In this case the petitioner does not dispute that the Department attempted to contact the prescribing physician the same day it received the prior approval request for Oxycontin (August 10, 2001), and that he was notified at least as of August 24, 2001 that prior approval had not been granted. The petitioner also does not dispute that his doctor did not

provide all the necessary information on the request until October 2, 2001, the effective date the Department granted prior approval and has paid for the petitioner's use of Oxycontin. The petitioner also does not dispute that the Department covered other narcotic pain relievers prescribed by other physicians during the period in question.

Although it is not known why the petitioner's doctor delayed in responding to the Department's request for further information, in light of the above it cannot be concluded that the Department did not correctly follow its established procedures in not granting prior authorization for Oxycontin until October 2, 2001. Thus, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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